



PATENT
ATTY. DOCKET NO.: P71218US0

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of: Confirmation No.: 5028

Konrad TETENBORG et al. Group Art Unit: 3782

U.S. Appln. No.: 10/578,889 Examiner: P. N. Helvey

Filed: May 11, 2006

For: PERFORATED FORM-FILL-SEAL (FFS) BAG

RESPONSE TO RESTRICTION REQUIREMENT

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants acknowledge receipt of the Office Action mailed April 12, 2010, in connection with the above-identified application.

Applicants respond to the Office Action, which imposes a restriction requirement between the claims of Group I, claims 1-8, drawn to a gusseted bag; Group II, claim 9, drawn to a method of producing and filling a gusseted bag; and Group III, claims 10-13, drawn to a machine that uses a gusseted bag, as follows.

Applicants respectfully request, as provided for in 37 CFR § 1.143, reconsideration and withdrawal of the restriction requirement. Applicants traverse the entire restriction requirement for at least the following reasons.

First, as provided for in 37 CFR § 1.475(b), an international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of various combinations of categories. The fifth of the categories, defined by 37 CFR § 1.475(b)(5), is "[a] product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process."

The provisions of 37 CFR § 1.475 (b)(5) describe exactly the claims of Groups I, II, and III of the instant application. The Group I product claims 1-8 define "a gusseted bag" (Office Action page 2). The Group II method claim 9 defines "a method of producing and filling a gusseted bag" (Office Action page 2), or more specifically, a "[m]ethod for the production and filling of a gusseted bag with the help of an FFS machine" (claim 9). The Group III claims 10-13 define "a machine that uses a gusseted bag" (Office Action page 2), or more specifically, an "FFS machine for the production and filling of gusseted bags or flat bags" (claim 10).

Furthermore, 37 CFR § 1.475(a) ("Unity of invention before the International Searching Authority, the International Preliminary Examining Authority and during the national stage") provides for unity of invention as follows:

An international and a national stage application shall relate to one invention only or to a group of inventions

so linked as to form a single general inventive concept ("requirement of unity of invention"). Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a *technical relationship* among those inventions involving one or more of the same or corresponding special technical features. The expression "*special technical features*" shall mean *those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.* (Emphasis added)

The unity of invention is evident from inspection of Applicants' claims. First, see instant claim 1, which defines a gusseted bag that includes "a tear-open perforation (207,208,216) at least in the area of one of the corners of the bag" and "a cross-weld seal (206) in the area of at least one corner." Claim 1 requires that "the forming of the tear-open perforation (207,208,216) in the area of at least one corner is changed in such a way that the perforation (207) in the interspace between the edge (209) of the bag (200,212,214,217) and the corner weld seal (206) is provided in a different manner as compared to the perforation (208) between the corner weld seal (206) and the centerline (M) of the bag (200)."

Then, see instant method claim 9, which recites that "the gusseted bag (200,201,212,214,217) is provided with a tear-open perforation" and that "the bag (200,201,212,214,217) is provided with a corner weld seal (206)." Claim 9 requires that "the tear-open perforation (207,208,216) is inserted during the processing in the FFS machine and that the perforation (207) in the interspace

between the edge (209) of the bag (200, 212, 214, 217) and the corner weld seal (206) is provided in a different manner as compared to the perforation (208) between the corner weld seal (206) and the centerline (M) of the bag (200)."

Finally, see instant claim 10, which defines an "FFS machine for the production and filling of gusseted bags or flat bags (200,201,212,214,217)." The FFS machine includes "means for applying a tear-open perforation (220,240), wherein components of the gusseted bags (200,201,212,214,217) can be provided with a tear-open perforation (220,240) using said means, while they pass through the FFS machine." And, claim 10 requires that "the bags (200,201,212,214,217) can be provided using said means with perforation cuts (207,208,216), of which the length or periphery varies over the width of the bags (200,201,212,214,217)."

And, the Office Action even **acknowledges** that "the common technical feature of the inventions is the change in tear perforation form across a heat seal" (Office Action page 2, numbered paragraph 2).

But then, the Office Action asserts that "[t]his element cannot be a special technical feature under PCT Rule 13.2 because the element is shown in the prior art" and that "[s]pecifically, US Patent No. 6,360,916 discloses an package with a tear perforation that changes shape across a heat seal" (Office Action page 2, numbered paragraph 2).

Applicants respectfully disagree with the Office Action. More specifically, Applicants submit that "the common technical feature of the inventions" (the examiner's words) is simply *not* shown in the prior art reference that the Office Action relies upon. In fact, in the instant case, the common technical feature of the inventions *does* constitute the required "special technical feature" because there is no disclosure whatsoever in U.S. Patent No. 6,360,916 to Sokolsky et al. (hereinafter "Sokolsky") of a tear "perforation."

See Sokolsky's Figure 1, and the following disclosure at column 3, lines 27-38:

A sufficient border is left around the perimeter of the pouch 10 to permit heat sealing of the edges 62 during manufacture. **A tear-assisting serration, slot or cut portion 65** is provided at least one side of the nozzle portion 30. Of course, for convenience, another serration, slot or cut portion 65 can be provided on the other side of the nozzle portion 30, although this is not required. **Serration, slot or cut portion 65** is positioned near the discharge end 70 of nozzle portion 30 so that, when the pouch 10 is torn open, the tear line will extend across the nozzle portion 30, **substantially along dotted line 71**, transverse to the centerline 31 of nozzle portion 30 extending toward the corner 40. (Emphasis added)

Sokolsky therefore teaches "[a] tear-assisting serration, slot or cut portion 65." See in Figure 1 the triangular-shaped opening that is the "serration, slot or cut portion 65." A slot or a cut is certainly not Applicants' claimed feature of a tear-open "perforation." And, a "serration" is not a "perforation." The

word "serration" is defined as "the state of being serrate." The word "serrate" is defined as "having notched, toothlike projections," *The American Heritage Dictionary*. Therefore, Sokolsky's "tear-assisting serration, slot or cut portion 65" is structurally different from Applicants' claimed "perforation" feature.

Per the above quotation, Sokolsky also discloses that "the tear line will extend across the nozzle portion 30, substantially along dotted line 71." But Sokolsky's "dotted line 71" is simply that, a graphic representation to show *where* a tear line will extend across the nozzle portion 30. There is absolutely *no disclosure whatsoever* in the Sokolsky patent that "dotted line 71" designates a perforation, let alone Applicants' claimed tear-open perforation.

Furthermore, in addition to not even teaching a perforation, there is *no disclosure whatsoever* in Sokolsky of Applicants' claimed requirement that the "tear-open perforation (207,208,216) in the area of at least one corner is changed in such a way that the perforation (207) in the interspace between the edge (209) of the bag (200,212,214,217) and the corner weld seal (206) is provided in a different manner as compared to the perforation (208) between the corner weld seal (206) and the centerline (M) of the bag (200)."

Accordingly, the common technical feature of the inventions does constitute the required "special technical feature" because there is no disclosure whatsoever in Sokolsky of a tear "perforation," let alone, in the examiner's words, of Applicants' claimed "tear perforation *that changes shape across a heat seal.*"

And, there is unity of invention because the gusseted bag claims 1-8, the method claim 9, and the machine claims 10-13 all define inventions *that share the required special technical feature.*

Accordingly, the inventions defined by claims 1-13 meet the requirement of 37 CFR § 1.475(b)(5), i.e., "[a] product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process."

As required by 37 CFR § 1.143, Applicants also hereby provisionally elect, with traverse, Group I, claims 1-8, drawn to the gusseted bag.

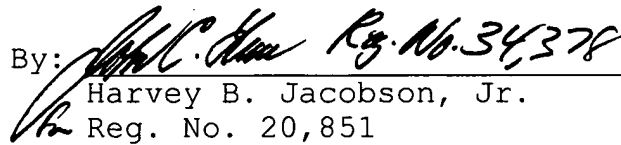
In summary, however, Applicants respectfully request reconsideration and withdrawal of the restriction requirement. Accordingly, examination of all of pending claims 1-13 is requested.

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The examiner is invited to telephone the undersigned representative at the number set forth below if he has questions or wishes to discuss this application.

Respectfully submitted,

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